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Court : Chennai

Decided On : Aug-17-2010

Judge : M.Jaichandren, J,

Appeal No. : S.A.No.496 of 2010 and M.P.No.1 of 2010

Appellant : Ponnusamy.

Respondent : Kasilingam.

Judgement :

1. This second appeal has been filed against the judgment and decree, dated 26.10.2009, made in A.S.No.86 of 2008, on the file of the Subordinate Court, Perambalur, confirming the judgment and decree, dated 28.11.2007, made in O.S.No.90 of 2000, on the file of the District Munsif Court, Perambalur.
2. The defendant in the suit, in O.S.No.90 of 2000, is the appellant in the present second appeal. The plaintiff in the said suit is the respondent herein.
3. The suit, in O.S.No.90 of 2000, had been filed by the plaintiff praying for a decree to declare the plaintiff's title in respect of the suit property and for the relief of permanent injunction restraining the defendant, his men, agents and servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties, and for costs.
4. The plaintiff had stated that he is the owner of the suit property. His father had purchased the suit property, under a sale deed, dated 24.6.1974, registered as

Document No.2128/74, from one Abdul Salam and three others. The suit property was given to the plaintiff, by way of a family partition. From the date of its purchase the suit property has been in the possession and enjoyment of the plaintiffs father, Palanivel Gounder and thereafter, with the plaintiff.

5. The plaintiff has been paying the kist in respect of the suit property and the UDR patta has also been issued in his name, for the fasli 1396. By the long possession and enjoyment, the plaintiff had also perfected title in respect of the suit property, by prescription. In the patta pass book issued for the suit property, the name of the plaintiff has been entered. The plaintiff has been cultivating sugarcane, paddy and tapioca in the suit land. While so, the defendant, who is a stranger to the suit property started to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. In such circumstances, the plaintiff had filed the suit, in O.S.No.90 of 2000, on the file of the District Munsif Court, Perambalur.

6. In the written statement filed on behalf of the defendant it had been stated that the sale deed, dated 24.6.1974, is a forged document. The vendors of the sale deed, namely, Abdul Salam and three others, had no right or title in respect of the suit property. It is false to state that the suit property is in possession and enjoyment of the plaintiff. In fact, the defendant has grown paddy crops in the suit property. The suit property, bearing S.No.164/1, belongs to the defendants family. The defendants grand father Maniara Rama Moopan had purchased 3.52 cents, on the southern side of the Vari, on 27.6.1936, from Alliammal, for a sum of Rs.600/-. The other suit properties are ancestral properties of the defendants family.

7. It has also been stated that, for the past 75 years the defendant's family had been enjoying the suit property. Patta had also been given to the defendants father, Maniara Duraisamy, in Patta No.407. After the demise of Maniara Rama Moopan, his three sons had divided the property amongst themselves. The eastern portion of the property had been allotted to Perumal, the middle portion had been allotted to Thiruman and the western portion had been allotted to the defendant's father Duraisamy. After the said partition each of the share holders have been enjoying their respective shares.

8. While so, Thiruman had sold the share of 1 acre and 96 cents to the defendants father, on 12.9.1961, for a sum of Rs.3,000/-. Subsequent to the said sale the defendants father has been owning the property, having an extent of 3 acres and 92 cents. 1 acre and 96 cents on the eastern side is the share of Perumal. Both of them have been enjoying their respective shares. It has also been stated that the legal heirs of Perumal are necessary parties to the suit. Since, the suit filed by the plaintiff is not maintainable, it is liable to be dismissed.

9. In view of the averments made on behalf of the plaintiff, as well as the defendant, the trial Court had framed the following issues for consideration:

"1) Whether it is correct to say that the suit property belongs to the plaintiff?

2) Whether the suit property is in the possession of the plaintiff?

3) Whether the suit is affected due to the non-inclusion of the necessary parties to the suit?

4) Whether the plaintiff is entitled to a decree of declaration of title and for permanent injunction, as prayed for in the suit

5) What other relief the plaintiff is entitled to?"

10. One witness had been examined on behalf of the plaintiff, as P.W.1. Sixteen documents had been marked on behalf of the plaintiff, as Exs.A-1 to A-16. Two witnesses had been examined as D.W.1 and D.W.2, and fifteen documents had been marked on behalf of the defendants, as Exs.B-1 to B-15.

11. The trial Court had found that the plaintiff had accepted the fact that the grandfather of the defendant, Maniara Rama Moopan, had purchased 3.52 acres of land, in S.No.164/1, having an extent of 5.86 acres. The trial Court had also found that there was no proper explanation from the defendant to show as to how the remaining extent of land in the said survey number could be said to belong to the defendants family. The trial Court had also found that no revenue records had been filed on behalf of the defendant to substantiate his claim that there was a partition of the properties, as claimed by the defendant. Even though, as per Ex.B-

3, sale deed, dated 12.9.1961, there had been a partition in the family of the defendant, even before the year, 1961, the same had not been substantiated by the relevant revenue records. However, Ex.B-8 pass book had been issued in respect of S.No.164/1, for an extent of 5.86 acres, in the name of Duraisami, the father of the defendant. Ex.B-9 shows the payment of kist in respect of the said property.

12. The trial Court had also found that the property had been divided into three equal shares of 1.96 acres, amongst the three sons of Maniara Rama Moopan, who is the grand father of the defendant. From Ex.B-2 sale deed, dated 27.6.1936, it had been found that only the property on the southern side of the Vari had been divided amongst the defendants father and his sons. On the other hand, the trial Court had found that many years before the filing of the suit Ex.A-3 patta, in respect of the suit property, had been issued to the plaintiff, in Fasli 1396. Further, adangals marked as Exs.A-6 and A-13, for the Faslis 1393 and 1396, were found to be in the name of the plaintiffs father. From Exs.A-7 and A-11 it had been found that the kist in respect of the suit property had been paid by the plaintiff mentioning the patta number of the land in question. For the fasli 1388, Ex.A-12, chitta was found to be in the name of the plaintiffs father.

13. Further, the trial Court had not accepted the claim of the defendant that no independent witness had been examined to substantiate the claims made by the plaintiff. From the evidence available on record the trial Court had also come to the conclusion that there was nothing shown on behalf of the defendant that the property in question was ancestral in nature, as claimed by the defendant. The trial Court had also held that the suit filed by the plaintiff would not be adversely affected by the non-inclusion of the legal representatives of Perumal, as contended by the defendant.

14. In such circumstances, the trial Court had come to the conclusion that the plaintiffs family has been in enjoyment of the suit property, as claimed by the plaintiff in the suit, in O.S.No.90 of 2000. As such, the trial Court had decreed the suit filed by the plaintiff, by its judgment and decree, dated 28.11.2007, made in O.S.No.90 of 2000.

15. Aggrieved by the judgment and decree of the trial Court, dated 28.11.2007, the defendant in the suit had filed an appeal on the file of the Subordinate Court, Perambalur, in A.S.No.86 of 2008, raising various grounds.

16. On a perusal of the grounds of appeal the lower Appellate Court had framed the following points for determination:

1) Whether the findings of the trial Court declaring the plaintiff's title and granting permanent injunction, as prayed for in the suit is correct?

2) Whether the judgment and decree of the trial Court are liable to be set aside?

17. In view of the averments made on behalf of the appellant, as well as the respondent and in view of the evidence available, the lower Appellate Court had confirmed the judgment and decree of the trial Court, by its judgment and decree, dated 26.10.2009, made in A.S.No.86 of 2008.

18. Aggrieved by the judgment and decree of the lower Appellate Court, dated 26.10.2009, the appellant in A.S.No.86 of 2008, who was the defendant in the suit, in O.S.No.90 of 2000, had filed the present second appeal before this Court, raising the following questions, as substantial questions of law: -

"1) Whether both the lower Court decided the issue by discussing the entire evidence exhibits of both sides?

2) Whether both the lower Court are right in decreeing the suit without evidence for possession of the suit schedule property by the plaintiff?

3) Whether both the lower Court are right in decreeing the suit on the ground that the defendant failed to prove his case?

4) Whether both the lower Court is right in decreeing the suit by neglecting the evidence of D.W.1 with perverse finding?

5) Whether both the lower Court was correct in decreeing the suit contrary to admission of B1 to B15 by the plaintiff himself in his evidence?"

19. The learned counsel appearing on behalf of the appellant had submitted that the judgment and decree of the Courts below were erroneous, contrary to law and the probabilities of the case. He had also submitted that the Courts below ought to have disbelieved the evidence of D.W.1, and should have rejected the evidence adduced on behalf of the respondent, by way of Exhibits A-1 to A-6.

20. It had also been submitted that the Courts below ought to have accepted the evidence adduced on behalf of the appellant, by way of Exs.B-1 to B-15. The Courts below had erroneously held that it was the duty of the appellant/defendant to prove his case, instead of holding that it was for the respondent/plaintiff to have proved his case. The Courts below ought to have dismissed the suit since, the plaintiff had failed to show as to how Khadir Sahib and others, mentioned in Ex.A-9, were related to those who had executed the Ex.A-1 sale deed in favour of the respondent. The Courts below had failed to discuss in detail about Ex.B-8 and the claim of the appellant that the remaining portions of the property, in S.F.No.164/1, was in possession of the appellant, as an ancestral property.

21. It had also been stated that the Courts below had not taken note of the admission of the respondent that the records filed by him would show that he was in possession only upto the year, 1981. Further, the respondent did not know as to where his share of the property was situated and as to who was using the two Wells in the property, having an extent of 5.86 cents. Further, the Courts below had not considered the claim of the appellant that Exs.A-1 and A-2 had been fabricated by the respondent, in connivance of the village administrative officer concerned. In such circumstances, the judgment and decree of the Courts below ought to be set aside, as they are devoid of merits.

22. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the judgment and decree of the Courts below are in accordance with law and the evidence available on record. It cannot be said that the trial Court, as well as the First Appellate Court had committed an error in not appreciating the evidence adduced on behalf of the appellant, properly. Both the Courts below had arrived at their conclusions by rightly appreciating, both the oral, as well as the documentary evidence available on record.

23. Having found that the claims made on behalf of the respondent had been substantiated, with sufficient evidence, the Courts below had decreed the suit filed by the respondent, praying for a declaration of title and for permanent injunction, in respect of the suit schedule properties. Further, no substantial question of law arises, for the consideration of this Court, in the present second appeal. Therefore, the second appeal is liable to be dismissed.

24. In view of the submissions made by the learned counsels appearing on behalf of the appellant and the respondent and in view of the records available, this Court is of the considered view that the appellant has not shown sufficient cause or reason to set aside the concurrent findings of the Courts below. Both the Courts below had arrived at their conclusions, based on the evidence available on record. The Courts below had found that the respondent in the present second appeal, who was the plaintiff in the suit, in O.S.No.90 of 2000, had established his right and title over the suit property and had also proved that he was in possession and enjoyment of the said property. The Courts below had noted that the defendant in the suit, who was the appellant in the present second appeal, had failed to prove that there was an ancestral property in the suit survey number, in addition to the 3.52 acres said to have been purchased through Ex.B-2. It had also been noted that in Ex.B-7 filed on behalf of the appellant only an extent of 1.94 acres had been mentioned, contrary to the claims made on behalf of the appellant.

25. Further, the Courts below had noted that the appellant's grandfather had purchased the property on the southern side of the Vari and the respondent's father had purchased the property on the northern side of the Vari, running through S.No.164/1. Further, it had been held that, in so far as Ex.A-1 was concerned it was of the year, 1974, and therefore, it was accepted to be genuine, as per Section 52 of the Indian Evidence Act, 1872, especially, when no objection had been raised against the admissibility of the document, by the appellant. Further, the Courts below had also held that the appellant had not taken any steps to cancel the patta issued in favour of the respondent, in respect of the suit property. Further, necessary entries had been made in the relevant revenue records showing the possession of the suit property, by the respondent. Further, it is seen that no substantial question of law arises for the consideration of this

Court, in the present second appeal. Hence, the present second appeal is liable to be dismissed, as it is devoid of merits. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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